SUPREME COURT, U.S.
FILED
APR 1 1994
OFFICE OF THE CLERK

No. 93-1390

In The

# Supreme Court of the United States

October Term, 1993

JANELLE SUSAN SPAIN, an individual, and JENNA MARGARET SPAIN, a minor, by and through her Guardian Ad Litem, JANELLE SPAIN,

*Petitioners,*

v.

AETNA LIFE INSURANCE COMPANY,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF IN OPPOSITION

BLESS STRITAR YOUNG*
PARRY G. CAMERON
FULBRIGHT & JAWORSKI L.L.P.
865 S. Figueroa Street
Twenty-Ninth Floor
Los Angeles, California 90017
Telephone: (213) 892-9200

KEITH A. JONES
FULBRIGHT & JAWORSKI L.L.P.
Market Square
801 Pennsyivania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-0200

*Attorneys for Respondent Aetna Life Insurance Company*

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTION PRESENTED

Whether section 514(a) of the Employee Retirement and Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), preempts a common law action for an allegedly wrongful delay in authorizing a medical procedure under an employee benefit plan.

## PARTIES TO THE PROCEEDING BELOW

Respondent Aetna Life Insurance Company was the Defendant-Appellee in the Court of Appeals.[1]

Janelle Susan Spain, an individual, and Jenna Margaret Spain, a minor, by and through her Guardian Ad Litem, Janelle Spain, were the Plaintiffs-Appellants in the Court of Appeals.

---

[1] Pursuant to Rule 29.1, respondent Aetna Life Insurance Company provides the following list of parent corporations and non-wholly owned subsidiaries: Aetna Life and Casualty Company, Med Southwest, Inc., HEALTHWAYS, Inc., Aetna Health Plans of San Diego, Inc., PHPSNE Parent Corporation, Aetna Health Plans of Florida, Inc., and PARTNERS Health Plan of Pennsylvania, Inc.

TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

PARTIES TO THE PROCEEDING BELOW ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

STATEMENT OF THE CASE ..... 1

REASONS FOR DENYING THE WRIT ..... 3

I. THE DECISION OF THE NINTH CIRCUIT IS CONSISTENT WITH THE ERISA PREEMPTION DECISIONS OF THIS COURT AND WITH THE DECISIONS OF THE OTHER COURTS OF APPEALS THAT HAVE CONSIDERED ERISA'S PREEMPTION OF WRONGFUL DEATH CLAIMS ..... 3

A. ERISA'S Comprehensive Statutory Scheme Preempts State Wrongful Death Claims .... 3

B. The Decision Of The Ninth Circuit Is Consistent With The Courts Of Appeals That Have Addressed ERISA Preemption Of Wrongful Death Claims ..... 6

II. ERISA PREEMPTION IS NOT DEPENDENT UPON AN ERISA REMEDY AND ANY "GAP IN REMEDIES" SHOULD BE ADDRESSED TO CONGRESS ..... 8

CONCLUSION ..... 9

## TABLE OF AUTHORITIES

Page(s)

CASES

*Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321 (5th Cir. 1992) ..... 6, 7

*FMC Corp. v. Holliday*, 498 U.S. 52, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990) ..... 3

*Ingersoll-Rand Co. v. McClendon*, ___ U.S. ___, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990) ..... 3, 4

*Kanne v. Connecticut General Life Ins. Co.*, 867 F.2d 489 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989) ..... 2

*Kuhl v. Lincoln National Health Plan of Kansas City, Inc.*, 999 F.2d 298 (8th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S.Ct. 694, 126 L.Ed.2d 661 (1994) ..... 6, 7, 9

*Lister v. Stark*, 890 F.2d 941 (7th Cir. 1989), *cert. denied*, ___ U.S. ___, 111 S.Ct. 579, 112 L.Ed.2d 584 (1990) ..... 8

*Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988) ..... 5

*Memorial Hospital System v. Northbrook Life Ins. Co.*, 904 F.2d 236 (5th Cir. 1990) ..... 7

*Mertens v. Hewitt Associates*, ___ U.S. ___, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993) ..... 5

*Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985) ..... 2, 3, 4

*Olson v. General Dynamics Corp.*, 960 F.2d 1418 (9th Cir. 1991) ..... 9

TABLE OF AUTHORITIES – Continued

Page(s)

*Phillips v. Amoco Oil Co.*, 799 F.2d 1464 (11th Cir. 1986), *cert. denied*, 481 U.S. 1016, 107 S.Ct. 1893, 95 L.Ed.2d 500 (1987) ..... 8

*Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987) .....1, 2, 3, 8

*Settles v. Golden Rule Ins. Co.*, 927 F.2d 505 (10th Cir. 1991) ..... 6

*Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983) ..... 4

*Sommers Drug Stores Co. v. Corrigan Enterprises, Inc.*, 793 F.2d 1456 (5th Cir. 1986) ..... 7

STATUTE

29 U.S.C. § 1144(a) .....i, 1, 3

## STATEMENT OF THE CASE

This is a wrongful death action brought by petitioners Janelle and Jenna Spain (the "Spains") against respondent Aetna Life Insurance Company ("Aetna") for Aetna's allegedly wrongful delay in approving payment of plan benefits for a medical procedure in its capacity as the third-party "claims administrator" of an employee benefit plan established by Trans World Airlines ("TWA").[2] The United States District Court for the Central District of California dismissed the action on the ground that it was preempted by section 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a). The court noted:

> [T]he main thrust of the lawsuit is that a denial in authorizing a continuation of medical treatment in progress negligently caused the death of an ERISA beneficiary. This has to do directly with the administration of an ERISA plan, and is therefore "related" to the plan within the meaning of *Pilot Life [Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987)] preemption.

Pet. App. B-14 to B-15.

---

[2] Although the Spains claim that the brief delay in the authorization of plan benefits caused the death of Steven Spain, Janelle Spain's husband and Jenna Spain's father, Steven Spain died as the result of testicular germ cell cancer. In declarations filed in the district court, Mr. Spain's doctors acknowledged that, even assuming there had been no delay in conducting the medical procedure, Mr. Spain's cancer, which was belatedly diagnosed at an advanced stage, would very likely have taken his life.

The Ninth Circuit affirmed. The court noted that section 514(a), which provides that ERISA "supersede[s] any and all state laws insofar as they may now or hereafter relate to any employee benefit plan," "is 'deliberately expansive,' " Pet. App. A-6, quoting *Pilot Life*, 481 U.S. at 45-46, and that this Court "has instructed that 'relates to' is to be 'given its broad common-sense meaning.' " Pet. App. A-7, quoting *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985). This means, the court held, that " 'state common law causes of action arising from the improper processing of a claim are preempted by federal law.' " Pet. App. A-8, quoting *Kanne v. Connecticut General Life Ins. Co.*, 867 F.2d 489, 493 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989). This conclusion, the court further observed, was consistent with the decisions of the other federal courts of appeals that have considered the issue. Pet. App. A-8 to A-9.[3]

---

[3] At its essence, the Spains' wrongful death lawsuit seeks to relitigate the very same employee benefit determinations which were at issue in an ERISA action brought in June of 1990 by Steven Spain, the decedent. In that lawsuit, the decedent also asserted causes of action for breach of contract, estoppel, breach of fiduciary duty, bad faith and fraud. The district court in that case specifically held that Steven Spain's lawsuit was one for the recovery of plan benefits under ERISA, and that his claims for extra-contractual damages were preempted by ERISA's statutory framework.

## REASONS FOR DENYING THE WRIT

The decision below is correct. There is no conflict among the circuits (indeed, none even is alleged), nor is there any reason for granting review. In this routine ERISA case, the courts below simply followed this Court's decisions in *Pilot Life*, *Metropolitan Life*, and other similar ERISA preemption cases.

### I.

### THE DECISION OF THE NINTH CIRCUIT IS CONSISTENT WITH THE ERISA PREEMPTION DECISIONS OF THIS COURT AND WITH THE DECISIONS OF THE OTHER COURTS OF APPEALS THAT HAVE CONSIDERED ERISA'S PREEMPTION OF WRONGFUL DEATH CLAIMS

#### A. ERISA'S Comprehensive Statutory Scheme Preempts State Wrongful Death Claims.

*Pilot Life* controls this case. As this Court noted, ERISA is a statutory scheme that comprehensively regulates employee benefit plans that provide medical, surgical, or hospital care or benefits in the event of sickness, accident, disability or death. *Pilot Life*, 481 U.S. at 44. Consistent with its decision to create a comprehensive, uniform federal scheme for the regulation of employee benefit plans, Congress drafted ERISA's preemption clause in broad terms. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990). *See also FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990).

ERISA provides that its provisions "shall supersede any and all state laws insofar as they . . . relate to any employee benefit plan. . . . " 29 U.S.C. § 1144(a). The key

to determining whether a state law is subject to ERISA preemption is whether the state law "relates to" an ERISA plan, and this Court has instructed that "relates to" is to be "given its broad common-sense meaning." *Metropolitan Life*, 471 U.S. at 739.

A state law "relates to" a benefit plan if it has a "connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983). A state law also "relates to" a benefit plan if operation of the law impinges on the functioning of the plan. *Metropolitan Life*, 471 U.S. at 739.[4]

A state law (whether statute or common law) that permits recovery for alleged improper processing of a claim under an employee benefit plan obviously "relates to" the benefit plan. Such a law requires both construction of the terms of the benefit plan and evaluation of the actions taken in administering the plan. Congress specifically barred such state interference in matters so central to the functioning of the plan.

The Spains argue that the effect of state wrongful death actions on ERISA plans is "too tenuous, remote or peripheral" to justify preemption because (1) the parties to the action are not ERISA principals, Pet. 25, and (2) the damages sought would not be assessed against the plan. Pet. 17. These contentions are factually incorrect. Janelle Spain, the decedent's wife, in fact is an ERISA principal –

---

[4] Moreover, a state law or claim may "relate to" a benefit plan, and thereby be subject to ERISA preemption, "even if the law is not specifically designed to affect such plans, or the effect is only indirect." *Ingersoll-Rand*, 498 U.S. at 139.

she is the TWA employee and plan participant by virtue of which the decedent became a plan beneficiary. And damages against claim administrators, ultimately, are borne by the plan, in one way or another. As this Court observed in *Mertens v. Hewitt Associates*, 113 S.Ct. 2063, 2072 (1993), exposure to this sort of liability "would impose high insurance costs upon persons who regularly deal with and offer advice to ERISA plans, and hence upon ERISA plans themselves."

The Spains ignore the fact that their tort action is based solely upon Aetna's alleged negligent delay in authorizing payment for medical benefits under the TWA plan – *i.e.*, the alleged failure to adequately perform duties created by an ERISA plan. Because the tort claim is inextricably intertwined with benefit determinations made by Aetna in connection with the TWA plan, the claim "relates to" an ERISA plan within the meaning of *Pilot Life* and its progeny and plainly is preempted by section 514(a) of ERISA.[5]

---

[5] The Spains' reliance upon *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), is also misplaced. In *Mackey*, this Court reviewed ERISA's provisions dealing with the execution of civil judgments and the alienation, assignment and garnishment of benefits and held that ERISA did not preempt a state's general garnishment statute as applied to collect judgments against plan participants. In *Mackey*, this Court relied, in part, on specific changes to ERISA effected through the Retirement Equity Act of 1984, which were thought necessary to insure that the statute's preemption provision could not be used to block the enforcement of domestic support orders. *Id.* at 838. Thus, both the facts and statutory context of *Mackey* were quite different from this case.

**B. The Decision Of The Ninth Circuit Is Consistent With The Courts Of Appeals That Have Addressed ERISA Preemption Of Wrongful Death Claims.**

The decision below is in accord with the decisions of the Fifth, Eighth and Tenth Circuits, the only other appellate courts that have specifically addressed ERISA preemption of wrongful death claims. *See Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321, 1329-1330 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 812 (1992); *Kuhl v. Lincoln National Health Plan of Kansas City, Inc.*, 999 F.2d 298, 304 (8th Cir. 1993), *cert. denied*, 114 S.Ct. 694 (1994); *Settles v. Golden Rule Ins. Co.*, 927 F.2d 505, 508-509 (10th Cir. 1991).

The reasoning in *Settles* is representative of all three cases. In *Settles*, the Tenth Circuit found the injury alleged to be the direct result of the termination of plan benefits and therefore held the claims to be preempted by ERISA:

> The factual basis for each of plaintiff's state law claims directly concerns the alleged improper administration of the benefit plan. *Although [plaintiff] is not seeking benefits under the insurance policy, her claims require a finding that defendant wrongfully terminated [the] insurance coverage. Therefore, the claims relate to the employee benefit plan.*
>
> *Had Mr. Settles survived the wrongful termination of his benefits, any claim that he could have brought based on the wrongful termination of his benefits would have been barred by ERISA because it would have related to his employee benefit plan.* Therefore, because the decedent could not have brought suit under these facts, plaintiff's wrongful death claim is similarly barred.

927 F.2d at 509-510 (emphasis supplied). *See also Corcoran*, 965 F.2d at 1331-1332 (principle of *Pilot Life* that ERISA preempts state law claims alleging improper handling of benefit claims is broad enough to cover wrongful death actions); *Kuhl*, 999 F.2d at 302 (decision not to precertify payment deemed to relate directly to the administration of plan benefits).

Similarly here, even though the Spains are not themselves seeking plan benefits, their claim for tort damages in addition to the plan benefits that were paid, requires a finding that the plan benefits were improperly delayed, thus giving the claim a necessary and obvious connection with an ERISA plan for preemption purposes.[6]

---

[6] Importantly, the two cases upon which the Spains primarily rely, *Memorial Hospital System v. Northbrook Life Ins. Co.*, 904 F.2d 236, 250 (5th Cir. 1990), and *Sommers Drug Stores Co. v. Corrigan Enterprises, Inc.*, 793 F.2d 1456 (5th Cir. 1986), were decided by the same court that in 1992 determined that wrongful death claims are preempted by ERISA. The decision in *Corcoran* makes abundantly clear that the Fifth Circuit would preempt the wrongful death claim here.

## II.

## ERISA PREEMPTION IS NOT DEPENDENT UPON AN ERISA REMEDY AND ANY "GAP IN REMEDIES" SHOULD BE ADDRESSED TO CONGRESS

The Spains contend that preemption is not appropriate here because they will be left without any remedy.[7] However, preemption is not dependent upon the availability of ERISA remedies. *Pilot Life*, 481 U.S. at 54; *Lister v. Stark*, 890 F.2d 941, 946 (7th Cir. 1989), *cert. denied*, 111 S.Ct. 579 (1990) ("[T]he availability of a federal remedy is not a prerequisite for federal preemption"). Even if it were, the choice of remedies is a matter for Congress, not this Court.

In *Phillips v. Amoco Oil Co.*, 799 F.2d 1464, 1470 (11th Cir. 1986), *cert. denied*, 481 U.S. 1016 (1987), the Eleventh Circuit explained why Congress' creation of a "gap" in the law does not "undermine the reasoning on which a finding of preemption is based":

> The employees protest that to hold that ERISA preempts this fraud claim, while also holding that ERISA does not prohibit the wrong the employees feel they have suffered, leaves a "gap" in the law. That is exactly the result that obtains when Congress determines that federal law should govern a broad area to the exclusion of state regulation and chooses not to prohibit

---

[7] Although the Spains assert the absence of any remedy for what they allege transpired, their claim is more appropriately addressed to the UCLA Medical Center which abandoned Mr. Spain in the middle of the medical procedure. UCLA surely could have continued treating Mr. Spain while the parties resolved the certification issue.

> the actions formerly prohibited by state law. It is the very conflict between the federal scheme and state law that is to be avoided through preemption.

*See also Olson v. General Dynamics Corp.*, 960 F.2d 1418, 1423 (9th Cir. 1991) ("We agree with the Eleventh Circuit that any such gap is the concern of Congress"); *Kuhl*, 999 F.2d at 304 (modification of ERISA in light of modern insurance practices "must be the job of Congress, not the courts").

## CONCLUSION

The petition for writ of certiorari should be denied.

DATED: April 1, 1994

Respectfully submitted,

BLESS STRITAR YOUNG*
PARRY G. CAMERON
FULBRIGHT & JAWORSKI L.L.P.
865 S. Figueroa Street
Twenty-Ninth Floor
Los Angeles, California
90017
Telephone: (213) 892-9200

KEITH A. JONES
FULBRIGHT & JAWORSKI L.L.P.
Market Square
801 Pennsylvania Avenue,
N.W.
Washington, D.C. 20004
Telephone: (202) 662-0200

*Attorneys for Respondent Aetna Life Insurance Company*

*Counsel of Record